

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Accident Benefit Association

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 V unpaid vacation pay

Employer: Accident Benefit Association, PO Box 120, Rochester, NH 03866

Date of Hearing: June 22, 2015

Case No.: 50325

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant originally requested, through the filing of her wage claim, that the Department investigate the amount of vacation she was due upon separation from her employer. She then asserted she was owed \$1,304.16 in unpaid vacation pay due upon her termination of employment on April 10, 2015.

The employer denies the claimant is due any further vacation pay. They paid her all the vacation time which she had accrued for 2015.

FINDINGS OF FACT

The claimant worked for the employer from September 19, 2011 through April 10, 2015, when the employer terminated her employment.

The claimant argues the written policy only discusses payment of vacation pay when an employee quits. The policy does not address the situation in which the employer terminates the employee.

The employer argues the word "quit" means leaving for any reason, whether terminated by the employer, the employee quits of their own accord or if the employee passes away.

RSA 275:49 III requires that the employer make available to employees in writing, or through a posted notice maintained in an accessible place, employment practices and policies regarding vacation pay. Lab 803.03 (b) requires employers to provide his/her employees with a written or posted detailed description of employment practices and policies as they pertain to paid vacations, holidays, sick leave, bonuses, severance pay, personal days, payment of the employees expenses, pension and all

other fringe benefits per RSA 275:49. Lab 803.03 (f) (6) requires an employer maintain on file a signed copy of the notification.

The employer properly notified the claimant of the written policy regarding vacation pay via the employee handbook and the collective bargaining agreement.

The written policy in the employee handbook states, in relevant part, "Leave, Please understand that the Association advances each employee annual and sick leave at the beginning of the year with the expectation that the employee will work the entire year to earn the leave advanced to them. Should an employee quit work prior to earning leave hours actually paid to the employee, an overpayment will exist."

The parties disagree as to the meaning of the word "quit". The definition of "quit" is not at issue for this hearing.

The employer properly notified the claimant that the vacation pay hours credited on January 1 of each calendar year were not yet earned until the calendar year had been completed. The claimant separated from employment on April 10, 2015. The employer paid the claimant the vacation pay hours she had earned as of that date. The balance of the vacation pay hours she is claiming had not been earned upon her separation.

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence that she is due the claimed vacation pay under the written policy of the employer.

DISCUSSION

The claimant has the burden of proof in these matters to provide proof by a preponderance of evidence that her assertions are true.

Pursuant to Lab 202.05 "Proof by a preponderance of evidence" means a demonstration by admissible evidence that a fact or legal conclusion is more probable than not.

The Hearing Officer finds the claimant failed to meet her burden in this claim.

DECISION

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as RSA 275:43 V considers vacation pay to be wages, when due, if a matter of employment practice or policy, or both, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that she is due any vacation pay, it is hereby ruled that the Wage Claim is invalid.

Melissa J. Delorey
Hearing Officer

Date of Decision: July 10, 2015

MJD/kdc